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CLERK US DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

BY ________ DEPUTY

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UNITED STATES OF AMERICA

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA, Plaintiff, v. ALFONSO SEGURA-FIGUEROA, Defendant.	CASE NO. 07CR3217-LAB DATE: January 14, 2008 TIME: 2:00 p.m. GOVERNMENT'S RESPONSE IN OPPOSITION TO DEFENDANT'S MOTION TO: (1) COMPEL DISCOVERY; (2) PRESERVE EVIDENCE; AND (3) GRANT LEAVE TO FILE FURTHER MOTIONS.

COMES NOW, the plaintiff, UNITED STATES OF AMERICA, by and through its counsel, Karen P. Hewitt, United States Attorney, and Luella M. Caldito, Assistant United States Attorney, and hereby files its Response in Opposition to Defendant's above-referenced Motions. This Response is based upon the files and records of this case.

I

STATEMENT OF THE CASE

On November 28, 2007, a federal grand jury in the Southern District of California returned a two-count Indictment charging Alfonso Segura-Figueroa ("Defendant") with Deported Alien Found In the United States, in violation of Title 8, United States Code, Section 1326. The Indictment further alleged that Defendant had been removed from the United States subsequent to July 13, 2004.

II

STATEMENT OF FACTS

A. THE INSTANT OFFENSE

On November 6, 2007, at approximately 1:40 a.m., United States Border Patrol Agent Gustavo Rivera was performing line watch duties near an area known as Del Rio Ranch. This area is approximately 18 miles east of the Tecate, California Port of Entry and approximately 1 mile north of the United States/Mexico international border. While in the area, Agent Rivera found footprints leading into the brush. Agent Rivera followed the footprints and encountered a group of 9 individuals. All of these individuals, including defendant Segura-Figueroa, were hiding in the surrounding brush.

Agent Rivera approached the individuals and conducted a field interview. All nine individuals, including Defendant, admitted that they were citizens and nationals of Mexico without any legal documentation to enter or remain in the United States.

Defendant was arrested and transported to the Campo Border Patrol Station where his fingerprints were entered into a routine records check system. Defendant's identity was confirmed, along with his criminal and immigration histories.

At approximately 6:00 a.m., Defendant was advised of his Miranda rights, which he acknowledge and waived. In a post-Miranda interview, Defendant admitted that he was a citizen and national of Mexico without any immigration documents to allow him to enter or remain in the United States. Defendant admitted that he knowingly entered the United States through an unfenced portion of the international boundary at approximately 1:10 p.m. on November 6, 2007.

B. DEFENDANT'S IMMIGRATION HISTORY

Defendant is a citizen of Mexico who was ordered deported by an Immigration Judge on or about May 23, 2007. Based on that order, Defendant was physically removed from the United States on June 8, 2007, through the San Ysidro, California Port of Entry.

III

ARGUMENT

A. THE UNITED STATES HAS AND WILL COMPLY WITH ITS DISCOVERY OBLIGATIONS

The United States has and will continue to fully comply with its discovery obligations. To date, the United States has produced 341 pages of discovery to Defendant's counsel, a DVD recording of Defendant's post-arrest interview an audiotape of Defendant's deportation hearing. As of today, the United States has received no reciprocal discovery. Counsel believes that all discovery disputes can be resolved amicably and informally in this case. In view of the below-stated position of the United States concerning discovery, it is respectfully requested that no orders compelling specific discovery by the United States be made at this time. The Government has no objection to the preservation of evidence for a reasonable time period.

1. Defendant's A-file and Deportation Tape

On December 18, 2007, the defense counsel viewed Defendant's A-file at the United States Attorney's Office. As a result of that viewing, the Government produced 314 pages of discovery to defense counsel. The deportation tape was provided to defense counsel on 17, 2007.

2. Defendant's Statements

The United States recognizes its obligation under Federal Rules of Criminal Procedure ("Rules") 16(a)(1)(A) and 16(a)(1)(B) to provide to Defendant any written statements and the substance of Defendant's oral statements. The United States has produced all of Defendant's statements that are known to the undersigned Assistant U.S. Attorney at this time. If the United States discovers additional oral or written statements that require disclosure under the relevant Rules, such statements will be promptly provided to Defendant.

3. Arrest Reports, Notes, and Dispatch Tapes

The United States does not object to the request for arrest reports and has already produced to Defendant all arrest reports known to the United States at this time.

The United States has no objection to the preservation of the handwritten notes taken by any of the Government's agents and officers. See United States v. Harris, 543 F.2d 1247, 1253 (9th Cir. 1976) (agents must preserve their original notes of interviews of an accused or prospective government witnesses). However, the United States objects to providing Defendant with a copy of any rough notes at this time. Rule 16(a)(1)(A) does not require disclosure of the rough notes where the content of those notes have been accurately reflected in a type-written report. See United States v. Brown, 303 F.3d 582, 590 (5th Cir. 2002); United States v. Coe, 220 F.3d 573, 583 (7th Cir. 2000) (Rule 16(a)(1)(A) does not require disclosure of an agent's notes even where there are "minor discrepancies" between the notes and a report). The Government is not required to produce rough notes pursuant to the Jencks Act, because the notes do not constitute "statements" (as defined 18 U.S.C. § 3500(e)) unless the notes (1) comprise both a substantially verbatim narrative of a witness' assertion, and (2) have been approved or adopted by the witness. United States v. Spencer, 618 F.2d 605, 606-07 (9th Cir. 1980). The rough notes in this case do not constitute "statements" in accordance with the Jencks Act. See United States v. Ramirez, 954 F.2d 1035, 1038-39 (5th Cir. 1992) (rough notes were not statements under the Jencks Act where notes were scattered and all the information contained in the notes was available in other forms). The notes are not Brady material because the notes do not present any material exculpatory information, or any evidence favorable to Defendant that is material to guilt or punishment. Brown, 303 F.3d at 595-96 (rough notes were not Brady material because the notes were neither favorable to the defense nor material to defendant's guilt or punishment); United States v. Ramos, 27 F.3d 65, 71 (3d Cir. 1994) (mere speculation that agents' rough notes contained Brady evidence was insufficient). If, during a future evidentiary hearing, certain rough notes become discoverable under Rule 16, the Jencks Act, or Brady, the notes in question will be provided to Defendant.

The United States is unaware of any dispatch tapes associated with this case at this time.

4. Brady Material

The United States is well aware of and will continue to perform its duty under Brady v. Maryland, 373 U.S. 83 (1963), and United States v. Agurs, 427 U.S. 97 (1976), to disclose exculpatory evidence within its possession that is material to the issue of guilt or punishment. Defendant, however, is not entitled to all evidence known or believed to exist which is, or may be, favorable to the accused, or which pertains to the credibility of the United States' case. As stated in United States v. Gardner, 611 F.2d 770 (9th Cir. 1980), it must be noted that "the prosecution does not have a constitutional duty to disclose every bit of information that might affect the jury's decision; it need only disclose information favorable to the defense that meets the appropriate standard of materiality." Id. at 774-775 (citation omitted).

The United States will turn over evidence within its possession which could be used to properly impeach a witness who has been called to testify.

Although the United States will provide conviction records, if any, which could be used to impeach a witness, the United States is under no obligation to turn over the criminal records of all witnesses. United States v. Taylor, 542 F.2d 1023, 1026 (8th Cir. 1976). When disclosing such information, disclosure need only extend to witnesses the United States intends to call in its case-in-chief. United States v. Gering, 716 F.2d 615, 621 (9th Cir. 1983); United States v. Angelini, 607 F.2d 1305, 1309 (9th Cir. 1979).

Finally, the United States will continue to comply with its obligations pursuant to United States v. Henthorn, 931 F.2d 29 (9th Cir. 1991).

5. Pinpoint Discovery Requests for Brady Material

As stated above, the Government will comply with its discovery obligations under Brady.

6. Any Information That May Result in a Lower Sentence Under the Guidelines

The United States has complied and will continue to comply with its discovery obligations under Brady v. Maryland, 373 U.S. 83 (1963).

7. Defendant's Prior Record

The United States has provided Defendant with a copy of Defendant's known prior criminal record under Rule 16(a)(1)(D). See United States v. Audelo-Sanchez, 923 F.2d 129, 130 (9th Cir. 1990). Should the United States determine that there are any additional documents pertaining to Defendant's prior criminal record, those will be promptly provided to Defendant.

8. Any Proposed 404(b) Evidence

The United States will disclose, in advance of trial, the general nature of any "other bad acts" evidence that the United States intends to introduce at trial pursuant to Federal Rule of Evidence 404(b).

9. Evidence Seized

The United States has complied and will continue to comply with Rule 16(a)(1)© in allowing Defendant an opportunity, upon reasonable notice, to examine, copy and inspect physical evidence which is within the possession, custody or control of the United States, and which is material to the preparation of Defendant's defense or are intended for use by the United States as evidence in chief at trial, or were obtained from or belong to Defendant, including photographs.

10. Tangible Objects

The United States has complied and will continue to comply with Rule 16(a)(1)(E) in allowing Defendant an opportunity, upon reasonable notice, to examine, inspect, and copy tangible objects that are within its possession, custody, or control, and that is either material to the preparation of Defendant's defense or is intended for use by the United States as evidence during its case-in-chief at trial, or was obtained from or belongs to Defendant. The United States, however, need not produce rebuttal evidence in advance of trial. See United States v. Givens, 767 F.2d 574, 584 (9th Cir. 1984).

11. Evidence of Bias or Motive to Lie

The United States is unaware of any evidence showing that any prospective Government witness is biased or prejudiced against Defendant or has a motive to falsify testimony. The United States will comply with its obligations under Brady, Henthorn, and Giglio.

12. Impeachment Evidence

The United States is unaware of any evidence that any prospective witness has engaged in any criminal act, but will comply with its obligations under Brady, Henthorn, and Giglio, as well as all other applicable rules of discovery. The Government is unaware of any statements favorable to Defendant, and repeats that all reports from the date of arrest have been produced.

13. Evidence of Criminal Investigation of Any Government Witness

The United States objects to providing any evidence that a prospective witness is under criminal investigation, but will provide the conviction record, if any, which could be used to impeach all witnesses the United States intends to call in its case-in-chief.

In addition, the United States will comply with United States v. Henthorn, 931 F.2d 29 (9th Cir. 1991) and request that all federal agencies involved in the criminal investigation and prosecution review the personnel files of the federal law enforcement inspectors, officers, and special agents whom the United States intends to call at trial and disclose information favorable to the defense that meets the appropriate standard of materiality. United States v. Booth, 309 F.3d 566, 574 (9th Cir. 2002)(citing United States v. Jennings, 960 F.2d 1488, 1489 (9th Cir. 1992). If the undersigned Assistant U.S. Attorney is uncertain whether certain incriminating information in the personnel files is "material," the information will be submitted to the Court for an in camera inspection and review.

14. Evidence Affecting Perception, Recollection, Ability to Communicate or Truth Telling

The United States is unaware of any evidence tending to show that any prospective witness's ability to perceive, recollect, tell the truth, or communicate is impaired.

15. Witness Addresses

The United States objects to this request as overbroad, unnecessary, and unsupported. Through discovery, Defendant has the names of the officers and agents involved in her arrest. In addition, the United States will provided Defendant with a list of witnesses it intends to call in its trial memorandum. The United States objects to the request for the name and address of witnesses who will not be called by the Government at trial as overbroad and irrelevant.

16. Name of Witnesses Favorable to Defendant

The United States is unaware of any witnesses favorable to Defendant.

17. Statements Relevant to the Defense

All known statements have been produced. The United States will continue to comply with its obligation to produce all evidence relevant to the defense. The United States opposes Defendant's motion to produce the grand jury transcripts as he has not shown that he has a particularized need for the transcripts.

18. Jencks Act Material

The United States will comply with its discovery obligations under the Jencks Act, Title 18, United States Code, Section 3500, and as incorporated in Rule 26.2.

19. Giglio Information

The United States has complied and will continue to comply with its discovery obligations under Giglio v. United States, 405 U.S. 150 (1972).

20. Agreements Between the Governments and Witnesses

The Government is unaware of any such agreements.

21. Informants and Cooperating Witnesses

At this time, the United States is not aware of any confidential informants or cooperating witnesses involved in this case. The Government must generally disclose the identity of informants where: (1) the informant is a material witness, and (2) the informant's testimony is crucial to the defense. Roviaro v. United States, 353 U.S. 53, 59 (1957). If there is a confidential informant involved in this case, the Court may, in some circumstances, be required to conduct an in camera inspection to determine whether disclosure of the informant's identity is required under Roviaro. See United States v. Ramirez-Rangel, 103 F.3d 1501, 1508 (9th Cir. 1997). If the United States determines that there is a confidential informant or cooperating witness who is a material witness with evidence helpful to the defense or essential to a fair determination in this case, the United States will either disclose the identity of the informant or submit the informant's identity to the Court for an in camera inspection.

22. Personnel Records of Government Officers Involved in the Arrest

The United States will comply with its obligations under United States v. Henthorn, 931 F.2d 29 (9th Cir. 1991), and request that all federal agencies involved in the criminal investigation and prosecution review the personnel files of the federal law enforcement inspectors, officers, and special agents whom the United States intends to call at trial and disclose information favorable to the defense that meets the appropriate standard of materiality. United States v. Booth, 309 F.3d 566, 574 (9th Cir. 2002) (citing United States v. Jennings, 960 F.2d 1488, 1489 (9th Cir. 1992)). If the undersigned Assistant U.S. Attorney is uncertain whether certain incriminating information in the personnel files is "material," the information will be submitted to the Court for an in camera inspection and review.

23. Government Examination of Law Enforcement Personnel Files

The United States will comply with its obligations under United States v. Henthorn, 931 F.2d 29 (9th Cir. 1991), and request that all federal agencies involved in the criminal investigation and prosecution review the personnel files of the federal law enforcement inspectors, officers, and special agents whom the United States intends to call at trial and disclose information favorable to the defense that meets the appropriate standard of materiality. United States v. Booth, 309 F.3d 566, 574 (9th Cir. 2002) (citing United States v. Jennings, 960 F.2d 1488, 1489 (9th Cir. 1992)). If the undersigned Assistant U.S. Attorney is uncertain whether certain incriminating information in the personnel files is "material," the information will be submitted to the Court for an in camera inspection and review.

24. Expert Summaries

The United States will comply with Rule 16(a)(1)(G) and provide Defendant with a written summary of any expert testimony that the United States intends to use during its case-in-chief at trial under Federal Rules of Evidence 702, 703 or 705.

25. Reports of Scientific Tests or Examinations

Defendant requests the results of any scientific or other tests or examinations in connection with this case. The United States will disclose to Defendant the name, qualifications, and a written summary of testimony of any expert the United States intends to use during its case-in-chief at trial pursuant to Fed. R. Evid. 702, 703, or 705.

26. Residual Request

The United States has complied with Defendant's residual request for prompt compliance with Defendant's discovery requests and will continue to do so.

B. THE UNITED STATES WILL PRESERVE EVIDENCE

As stated above, the United States will preserve all evidence to which the Defendants are entitled pursuant to the relevant discovery rules.

C. MOTION FOR LEAVE TO FILE ADDITIONAL MOTIONS

The Government opposes this request unless the motion is based upon newly discovered evidence not available to Defendant at the time of the motion hearing.

IV

CONCLUSION

For the foregoing reasons, the United States requests that Defendant's Motion be denied where opposed.

DATED: January 7, 2008.

Respectfully Submitted,

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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA, Plaintiff, v. ALFONSO SEGURA-FIGUEROA, Defendant.	Case No. 07CR3217-LAB CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED that:

I, Diana M. Ortiz, am a citizen of the United States over the age of 18 years and a resident of San Diego County, California; my business address is 880 Front Street, Room 6293 San Diego, California 92101-8893; I am not a party to the above-entitled action, I deposited in the United States mail at San Diego, California, in an envelope bearing the requisite postage, a copy of:

GOVERNMENT'S RESPONSE IN OPPOSITION TO DEFENDANT'S MOTION TO:

(1) COMPEL DISCOVERY
(2) PRESERVE EVIDENCE; AND
(3) GRANT LEAVE TO FILE FURTHER MOTIONS.

to: Kurt D. Hermansen, Esq.
Law Office of Kurt D. Hermansen
110 West C Street, Suite 1810
San Diego, California 92101

the last known address, at which place there is delivery service of mail from the United States Postal Service. I declare under penalty of perjury that the foregoing is true and correct.

Executed on January 7, 2008.

Diana M. Ortiz